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Lame Ducks and the Antiquities Act: How (most) Presidents Use a 1906 Law to Ensure Their Environmental Legacies

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Recommended Citation

Larson D. 2017 Jan 9. Derek Larson on "Lame Ducks and the Antiquities Act: How (most) Presidents Use a 1906 Law to Ensure Their Environmental Legacies" [blog]. Avon Hills Salon. <https://avonhillssalon.com/2017/01/09/derek-larson-on-lame-ducks-and-the-antiquities-act-how-most-presidents-use-a-1906-law-to-ensure-their-environmental-legacies/>.

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AVON HILLS SALON

Thoughts from the Avon Hills

Derek Larson on “Lame Ducks and the Antiquities Act: How (most) Presidents Use a 1906 Law to Ensure Their Environmental Legacies”

JANUARY 9, 2017

Derek Larson

In a 1999 episode of the NBC political drama *The West Wing*, President Bartlett (Martin Sheen) found his efforts to preserve a prime piece of Montana wilderness from development blocked by a coalition of Republican Senators and mining-industry lobbyists. Just as all appeared lost, one of Bartlett’s aides rushed into the Oval Office shouting “I’ve got it! We’ll use the Antiquities Act!” As with the fictional president of *The West Wing*, many real presidents—including Jimmy Carter and Bill Clinton—turned to the same century-old law to establish or preserve their environmental legacies. In recent months President Obama has exercised his authority under the act to extend permanent protection to federal land at an almost unprecedented level, as congressional opposition left him with few other paths to advance his environmental agenda.

Virtually unknown outside the circles of environmental activists and policy wonks, the 1906 Antiquities Act is one of the most powerful weapons in the president’s arsenal of executive

authority. The law was passed in response to decades of looting and vandalism on public lands that had destroyed archaeological sites in the southwestern United States; the hope was that some of the cliff dwellings and petroglyphs remaining in the West could be preserved through greater federal oversight and regulation. With that goal in mind and at the urging of the community of professional archaeologists, Congress granted the president the authority to “declare by public proclamation historic landmarks and other objects of historic or scientific interests to be national monuments, the limits of which shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.”

Conservation-minded Theodore Roosevelt gladly accepted the charge and established the 1,100 acre Devils Tower National Monument in Wyoming soon after signing the bill. But during his final months in office in 1908, T.R. decided to stretch his executive muscles in designating 800,000 acres as the Grand Canyon National Monument, which he declared to be an area of “scientific interest” under the law. (After all, geology was a science and certainly the continent’s largest canyon was by definition “interesting.”) Congress—and the railroad companies that planned to develop the canyon as a tourist destination—was outraged but unable to reverse the decision; the Antiquities Act contains no provision for congressional review or reversal. Thus the tradition of the lame-duck national monument proclamation was born at the same time the definition of a monument expanded to include virtually anything a president could imagine.

The great majority of presidents have followed in Roosevelt’s footsteps, each declaring a series of national monuments that ranged in size from the tiny Father Millet Cross N.M. in New York, declared by Calvin Coolidge in 1925 to be just 0.01 acres, to the group of Alaskan monuments totaling nearly 45 million acres established by Jimmy Carter in 1980. Twenty-nine of our national parks were first protected in this fashion, including Grand Teton, Olympic, Death Valley, Zion, and Badlands. The three conservative Republican presidents of the 1920s created nearly three dozen monuments between them and more recently George W. Bush added six to the system. Most of the resulting monuments are managed by the National Park Service but beginning with President Carter some were left under the control of the agencies that initially managed the area, as was the case with four Alaskan monuments established within National Forests or National Wildlife Refuges. President Clinton extended this practice to include the Bureau of Land Management when he created the Grand Staircase-Escalante National Monument in Utah in 1996, near the end of his first term in office. Ultimately every president since 1906 except Richard Nixon, Ronald Reagan, and George H.W. Bush exercised his authority to establish national monuments under the Act.

Despite these precedents, President Obama’s use of the Antiquities Act has drawn both fire and praise for its extent. Due largely to Republican opposition to his environmental agenda and finding himself unable to make headway legislatively, Obama turned to the executive authority granted by the Act much as the fictional President Bartlett did on television and with similar results. Since national monuments must be created out of existing federally-owned lands, most potential sites are in Western states where political power is still wielded by mining, logging, ranching, and real-estate development interests hostile to any federal action that places land off-limits to economic exploitation. Congressional delegations from these states thrive on

donations from industry groups that have a long history of hostility toward extending protection to public lands that are currently open to resource extraction and development. Compounding local objections are those from the Tea Party and other right-wing groups that oppose the use of federal power in general. It should come as no surprise that certain members of Congress are livid over the current president's use of the Antiquities Act. What remains to be seen is whether their objections fade with the new administration, or if Congress breaks with over a century of precedent and actually acts to reverse some of Obama's actions legislatively, or barring that, decides to permanently limit or even revoke the executive authority granted by the Antiquities Act.

President Obama has established nearly 30 national monuments since taking office, the first in March 2009 but the majority in 2015-2016 as his presidency neared its end. The most recent were at Bears Ears Buttes in Utah and Gold Butte in Nevada; together our two newest monuments cover over 1.5 million acres of federal land. Based on his extensive use of the Antiquities Act to date and the widespread assumption that the incoming Trump administration will seek to roll back Obama's environmental legacy, it should surprise no one if he makes additional declarations in his final days as president. Over time public support for national monuments has been extremely strong, even when the initial declarations have been controversial. In an era when congressional politics make extending environmental protection on public lands almost impossible, environmentalists can be thankful they have the Antiquities Act on their side. In seeking a legacy for his presidency, Barack Obama may be thankful for it as well.